

## REMARKS

Claims 1, 9 and 20 have been amended. No further claims have been canceled. No new claims have been added. Claims 1-18 and 20 remain pending in the application.

### *Support for Claim Amendments*

Support for the amendments to claims 1 and 9 can be found in the specification at paragraph [0058] and Figures 1d, 2a, 3a, 4, 5 and 6.

Support for the amendment to claim 20 can be found in the specification at paragraph [0056] and [0065] and Figures 2c and 3b.

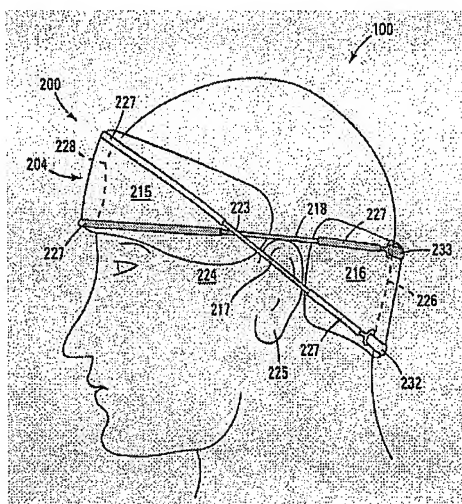
### *Objections/Rejections Under 35 U.S.C. § 112*

*1.0 The Examiner has rejected claims 1-9 under 35 U.S.C. §112, second paragraph as indefinite for use of the limitation "diametrically intersecting circumferential lines of retention".*

The primary purpose for the requirement of definiteness in claim language is to ensure that the public is adequately informed of the metes and bounds of the patented invention. *See*, M.P.E.P. §2173.

The examination of claims for definiteness under 35 U.S.C. §112, second paragraph must focus upon whether the claim meets the threshold requirements of clarity and precision, NOT whether more suitable language or modes of expression are available. Some latitude in the manner of expression and the aptness of terms should be permitted even though the claim language is not as precise as the examiner might desire. If the scope of the subject matter embraced by the claims is clear, and applicants have not otherwise indicated that they intend the invention to be of a scope different from that defined in the claims, the claims comply with 35 U.S.C. §112, second paragraph. M.P.E.P. §2173.04.

As set forth in the claims, the claimed invention is protective headgear that includes a “retention element” having at least two separate and distinct “circumferential lines of retention”. These claimed circumferential lines of retention are physical elements that, as the phrase connotes, hold and secure the headgear onto a human head by encircling the head. By way of example, Figure 2a is reproduced below with one of the circumferential lines of retention highlighted in yellow and the other highlighted in pink.



This construction of “circumferential lines of retention” is consistent with use of the phrase throughout the specification as well as the limitations in claim 2 (“a segment of each circumferential line of retention is elastic”) and 3 (“a segment of each circumferential line of retention is an elastic strap”).

The Examiner also requests clarification as to the structure that provides the claimed feature of an adjustable angle at which the circumferential lines of retention intersect. This feature, set forth in claim 7, is provided by the simple fact that the circumferential lines of retention are separate and distinct from one another, thereby allowing one to be repositioned relative to the other.

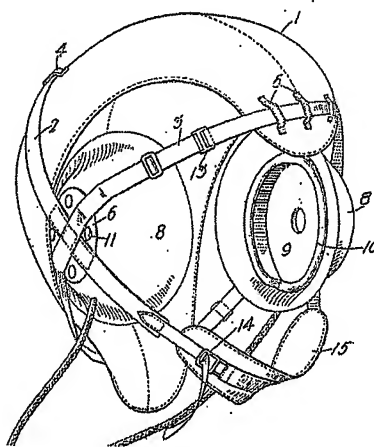
Withdrawal of this rejection is respectfully requested.

***Objections/Rejections***  
***Under 35 U.S.C. § 102***

**2.0**    *The Examiner has rejected claims 1-13 under 35 U.S.C. §102(b) as anticipated by Gilson (United States Patent 1,463,810).*

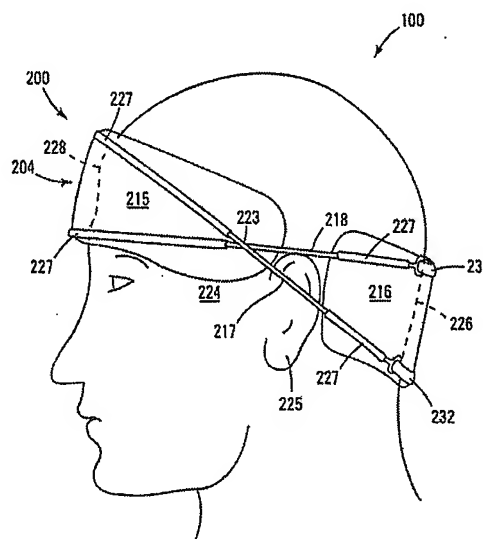
**SUMMARY OF CITED REFERENCE**

**Gilson** (United States Patent No. 1,463,810) discloses a head harness for a telephone head set. The head harness includes a skull-cap (1) that supports two elastic bands (2) and (3) configured to encircle the head of a wearer and intersect one another proximate the ears of a wearer. One of the bands (2) extends across the top of the head and under the chin of a wearer (à la a chin strap), while the other band (3) extends laterally across the forehead and underneath the occipital bone of a wearer (à la a head band). Ear cups (6) configured to hold telephony equipment are held in position over the ear of a wearer by the elastic bands (2) and (3).



## SUMMARY OF CLAIMED INVENTION

A First Embodiment of the Present Claimed Invention (claims 1-8) is a protective headguard (200) to be worn on a human head (100). The headguard (200) includes a protective pad (215 or 216) and a retention element cooperatively attached to the protective pad (215 or 216), with the retention element embodying at least two separate and distinct diametrically intersecting circumferential lines of retention (217 and 218) that both extend laterally across the forehead (204) when the headguard (200) is worn on the head (100).



A Second Embodiment of the Present Claimed Invention (claims 9-13) is a protective headguard (200) to be worn on a human head (100). The headguard (200) includes a protective pad (215) covering at least a portion of the forehead (104) and a pair of separate and distinct diametrically intersecting retention elements (217 and 218) attached to the protective pad (215) that both extend laterally across the forehead (204) when the headguard is worn on the head (100).

## LEGAL BASIS

An anticipation rejection under 35 U.S.C. § 102 requires that the cited reference(s) disclose each and every element of the claimed invention. *See, Hybritech Inc. v. Monoclonal*

Antibodies, Inc., 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986); Kloster Speedsteel AB et al. v. Crucible Inc. et al., 230 U.S.P.Q. 81, 84 (Fed.Cir. 1986). A reference anticipates a claim only when the reference discloses each and every element recited in the claim. See, Verdegaal Bros. v. Union Oil Co. of California, 2 U.S.P.Q.2d 1051 (Fed. Cir. 1987) and M.P.E.P. §2131. Accordingly, the "exclusion of a claimed element from a prior art reference is enough to negate anticipation by that reference." Atlas Powder Co. v. E.I. duPont De Nemours & Co., 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984).

*GILSON DOES NOT DISCLOSE EACH AND  
EVERY ELEMENT OF THE CLAIMED INVENTION.*

The First Embodiment of the Present Claimed Invention includes at least two separate and distinct diametrically intersecting circumferential lines of retention that ***both extend laterally across the forehead*** when the headguard is worn on the head. These circumferential lines of retention are NOT imaginary lines or projections, but constitute a tangible feature on the headgear. Similarly, the Second Embodiment of the Present Claimed Invention includes a pair of separate and distinct diametrically intersecting retention elements that ***both extend laterally across the forehead*** when the headguard is worn on the head. The head harness of Gilson includes two separate and distinct circumferential lines of retention, but only one of these lines of retention extend laterally across the forehead. The other line extends longitudinally across the top of the head and underneath the chin.

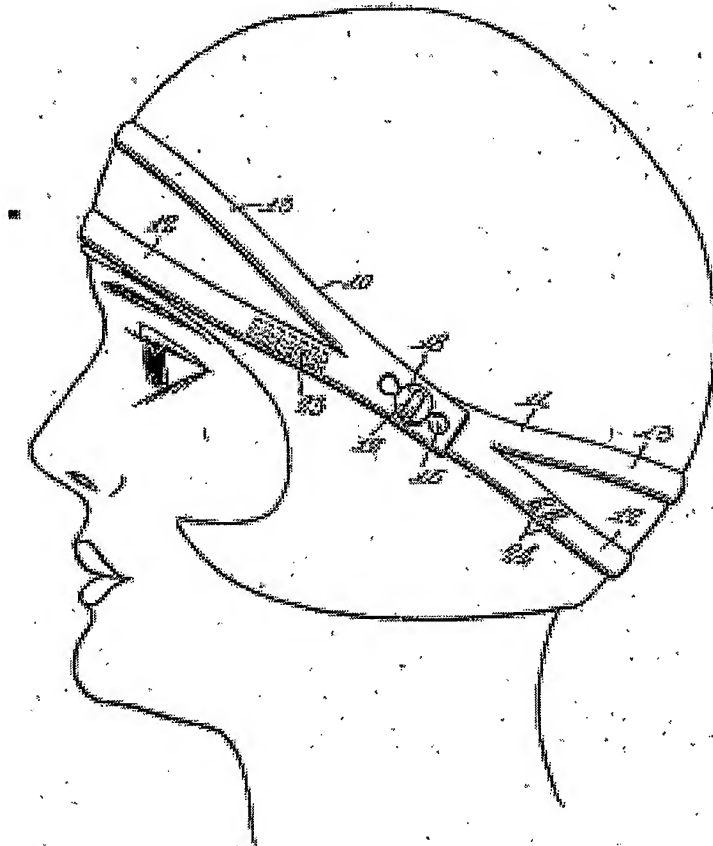
Withdrawal of this rejection is respectfully requested.

**3.0**    *The Examiner has rejected claim 20 as anticipated under 35 U.S.C. §102(b) by Wallman.*

SUMMARY OF CITED REFERENCE

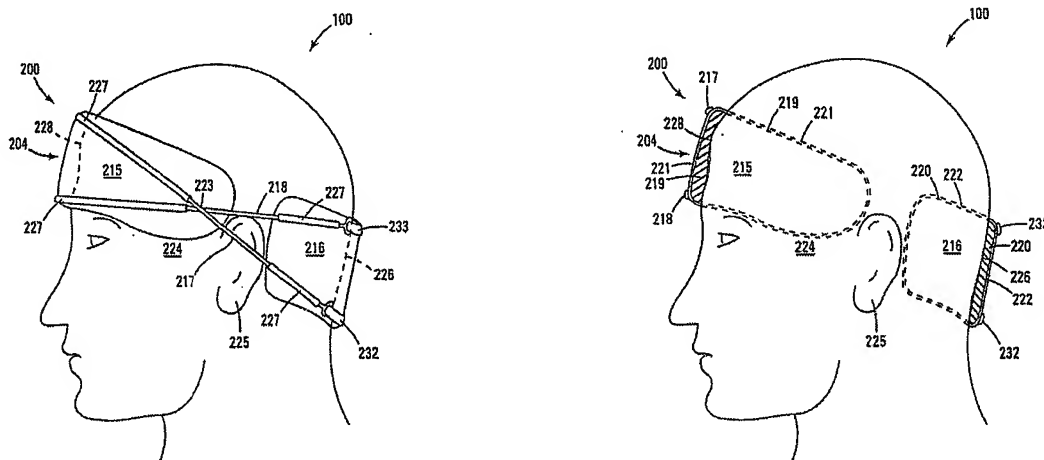
**Wallman** (United States Patent No. 1,638,756) discloses an ornamental head dress having a front section (10) and a back section (11), each having a lower band (12) and an upper band (13).

The front (10) and back (11) sections are adjustably connected at diametrically opposed points of attachment for fitting of the head dress.



## SUMMARY OF CLAIMED INVENTION

A Fourth Embodiment of the Present Claimed Invention (claim 20) includes a front piece (215) and a rear piece (216) pivotally attached to one another at diametrically opposed pivot points (223) whereby the pieces may be independently pivoted about the pivot points (223). The front (215) and rear (216) pieces are constructed with padding (219 and 220) to protect a wearer against physical injury from a blow to the head.



## LEGAL BASIS

An anticipation rejection under 35 U.S.C. § 102 requires that the cited reference(s) disclose each and every element of the claimed invention. *See, Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986); *Kloster Speedsteel AB et al. v. Crucible Inc. et al.*, 230 U.S.P.Q. 81, 84 (Fed. Cir. 1986). A reference anticipates a claim only when the reference discloses each and every element recited in the claim. *See, Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051 (Fed. Cir. 1987) and M.P.E.P. §2131. Accordingly, the “exclusion of a claimed element from a prior art reference is enough to negate anticipation by that reference.” *Atlas Powder Co. v. E.I. duPont De Nemours & Co.*, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984).

*WALLMAN DOES NOT DISCLOSE EACH AND  
EVERY ELEMENT OF THE CLAIMED INVENTION*

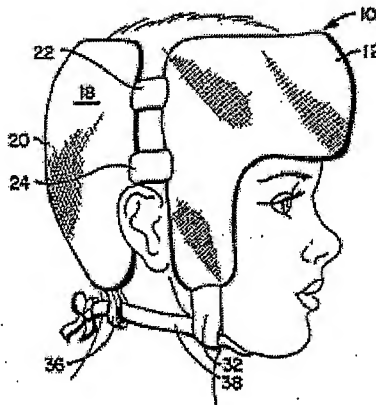
The Fourth Embodiment of the Present Claimed Invention includes front and rear pieces constructed *with padding to protect a wearer against physical injury from a blow to the head*. The head dress of Wallman is designed to be merely decorative.

Withdrawal of this rejection is respectfully requested.

**4.0** *The Examiner has rejected claims 14-16 and 18 under 35 U.S.C. §103(a) as obvious over Steffen (United States Patent No. 3,171,133) in view of Lampe et al. (United States Patent No. 6,397,399).*

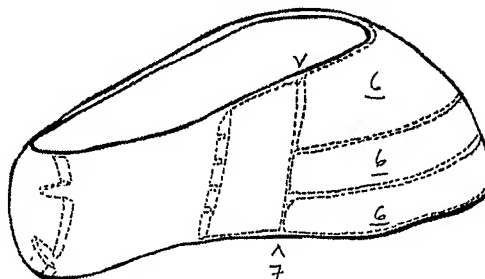
SUMMARY OF CITED REFERENCE

**Steffen** (United States Patent No. 3,171,133) discloses a protective helmet (10) having a one-piece frontal pad (12) and a one-piece posterior pad (18) interconnected by upper (22 and 26) and lower (24 and 28) pairs of elastic straps.



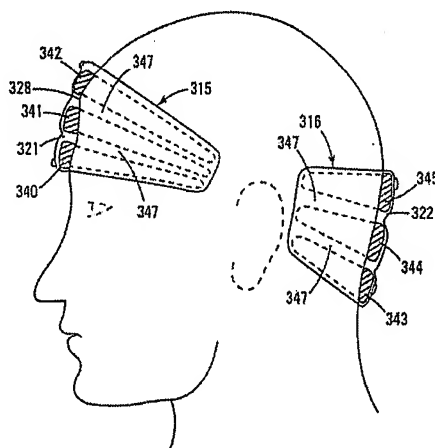


**Lampe et al. (399)** (United States Patent No. 6,397,399) discloses a protective headguard comprising a headband (1) with a multi-piece frontal pad (6) and a single-piece posterior pad (2) retained within pockets in the headband (1).



#### SUMMARY OF CLAIMED INVENTION

The Third Embodiment of the Present Claimed Invention (claims 14-18) includes a front protective piece (315) and a rear protective piece (316) wherein the rear protective piece (316) includes a plurality of pads (343-345) capable of shifting relative to one another.



#### LEGAL BASIS

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation; either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to

combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, NOT in applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). *See*, M.P.E.P. § 2143.

As to the first criteria, it is necessary to ascertain whether or not the reference motivates one of ordinary skill in the relevant art, having the reference before him, to make the proposed substitution, combination, or modification. In re Linter, 458 F.2d 1013, 173 U.S.P.Q. 560, 562 (CCPA 1972). Obviousness can only be established where there is some teaching, suggestion or motivation in the prior art or in the knowledge generally available to one of ordinary skill in the art, to combine the references and produce the claimed invention. In re Fine, 837 F.2d 1071, 5 U.S.P.Q. 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 U.S.P.Q.2d 1941 (Fed. Cir. 1992). *See*, M.P.E.P. § 2143.01.

*STEFFEN AND LAMPE ET AL DO NOT DISCLOSE EACH AND  
EVERY ELEMENT OF THE CLAIMED INVENTION*

The Third Embodiment of the Present Claimed Invention includes a ***rear protective piece with a plurality of pads capable of shifting relative to one another***. The protective headguards of Steffen and Lampe et al. both have a one-piece rear pad. The Examiner's contention on page 5 of the Office Action that "Lampe teaches a headgear comprising a rear portion having multiple protective pads 6" results from a misinterpretation of the disclosure provided in Lampe et al. (399). The protective pads (6) shown and described in Lampe et al. (399) are front pads that cover the forehead, **not** rear pads that cover the posterior portion of the head. Withdrawal of this rejection is respectfully requested.

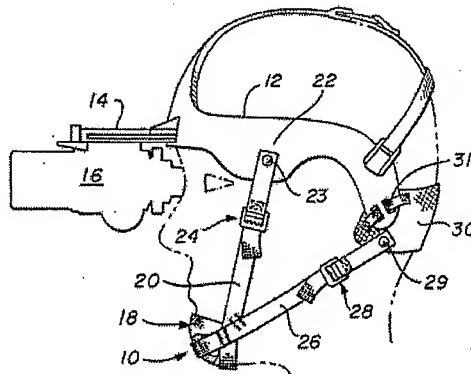
**5.0** *The Examiner has rejected claim 17 as obvious under 35 U.S.C. §103(a) over Steffen in view of Lampe et al. (399) and further in view of Mattes (United States Patent No. 4,741,054).*

#### SUMMARY OF CITED REFERENCE

**Steffen** (United States Patent No. 3,171,133) discloses a protective helmet having a one-piece frontal pad and a one-piece posterior pad interconnected by upper and lower elastic straps.

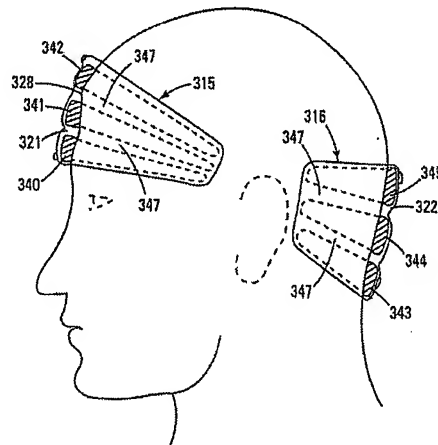
**Lampe et al. (399)** (United States Patent No. 6,397,399) discloses a protective headguard comprising a headband with a multi-piece frontal pad and a single-piece posterior pad retained within pockets in the headband.

**Mattes (054)** (United States Patent No. 4,741,054) discloses a chin cup (10) for use with military headgear (12). Mattes (054) attaches the chin cup (10) to the headgear (12) with a pair of overlapping chin straps (20 and 26). The headgear (12) depicted by Mattes (054) is a single continuous piece.



## SUMMARY OF CLAIMED INVENTION

The Third Embodiment of the Present Claimed Invention (claims 14-18) includes a front protective piece (315) and a rear protective piece (316) wherein the rear protective piece (316) includes a plurality of pads (343-345) capable of shifting relative to one another.



## LEGAL BASIS

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation; either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, NOT in applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). *See*, M.P.E.P. § 2143.

As to the first criteria, it is necessary to ascertain whether or not the reference motivates one of ordinary skill in the relevant art, having the reference before him, to make the proposed substitution, combination, or modification. In re Linter, 458 F.2d 1013, 173 U.S.P.Q. 560, 562 (CCPA 1972). Obviousness can only be established where there is some teaching, suggestion or motivation in the prior art or in the knowledge generally available to one of ordinary skill in the art,

to combine the references and produce the claimed invention. In re Fine, 837 F.2d 1071, 5 U.S.P.Q. 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 U.S.P.Q.2d 1941 (Fed. Cir. 1992). See, M.P.E.P. § 2143.01.

*STEFFEN, LAMPE ET AL. (399) AND MATTES (054) DO NOT DISCLOSE EACH AND EVERY ELEMENT OF THE CLAIMED INVENTION*

The Third Embodiment of the Present Claimed Invention includes a rear protective piece with a plurality of pads capable of shifting relative to one another. The protective headguards of Steffen, Lampe et al. and Mattes (054) each have a one-piece posterior pad.

Withdrawal of this rejection is respectfully requested.

### CONCLUSION

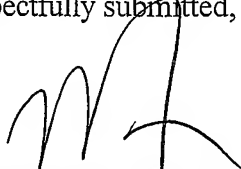
Applicant respectfully submits that all pending claims (claims 1-18 and 20) are in condition for allowance.

Respectfully submitted,

Date

21 Jan 2010

By

  
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